



**PETITION FOR ADOPTION, AMENDMENT, OR REPEAL
OF A STATE ADMINISTRATIVE RULE (RCW 34.05.330)**

The Office of Financial Management (OFM) has adopted this form for members of the public who wish to petition a state agency to adopt, amend, or repeal an administrative rule (regulation). Full consideration will be given to a petitioner's request.

Please complete the following:

PETITIONER'S NAME (PLEASE PRINT) ERIC T. NORDLOF		TELEPHONE NUMBER (INCLUDE AREA CODE) 253 876 7444	
STREET ADDRESS 602 W. Main St.	PO BOX NUMBER PO Box 798	CITY Auburn	STATE WA
		ZIP CODE 98071	

AGENCY RESPONSIBLE FOR ADMINISTERING THE RULE
Public Employment Relations Commission

Please submit completed and signed form to the "Rules Coordinator" at the appropriate state agency. The agency will contact you within 60 days.

Check all that apply below and explain on the back of this form with examples. Whenever possible, attach suggested language. You may attach other pages if needed.

☐ 1. NEW: I am requesting that a new WAC be developed.

I believe a new rule should be developed.

- ☐ The subject of this rule is:
- ☐ The rule will affect the following people:
- ☐ The need for the rule is:

☒ 2. AMEND: I am requesting a changing to existing WAC 391-25-030

☐ 3. REPEAL: I am requesting existing WAC _____ be removed.

I believe this rule should be changed or repealed because (check one or more):

- ☒ It does not do what it was intended to do.
- ☐ It imposes unreasonable costs.
- ☐ It is applied differently to public and private parties.
- ☐ It is not clear.
- ☐ It is no longer needed.
- ☐ It is not authorized. The agency has no authority to make this rule.
- ☐ It conflicts with another federal, state, or local law or rule. Please list number of the conflicting law or rule, if known:

☐ It duplicates another federal, state or local law or rule. Please list number of the duplicate law or rule, if known:

☒ Other (please explain): **See attached explanation**

3/10/09

PETITIONER'S SIGNATURE

Eric Nordlof

DATE

2/24/09

PROPOSED AMENDMENT TO WAC 391-25-030

(1) A "contract bar" exists while a valid collective bargaining agreement is in effect, so that a petition involving any or all of the employees covered by the agreement will be timely only if it is filed during the "window" period not more than ninety nor less than sixty days prior to the stated expiration date of the collective bargaining agreement.

(a) To constitute a valid collective bargaining agreement for purposes of this subsection:

(i) The agreement must cover a bargaining unit that is appropriate under the terms of the applicable statute;

(ii) The agreement must be in writing, and signed by the parties' representatives;

(iii) The agreement must contain a fixed expiration date not less than ninety days after it was signed; and

(iv) The agreement will only operate as a bar for the first three years after its effective date.

(b) An agreement to extend or replace a collective bargaining agreement shall not bar a petition filed in the "window" period of the previous agreement.

(c) A "protected" period is in effect during the sixty days following a "window" period in which no petition is filed, and a successor agreement negotiated by the employer and incumbent exclusive bargaining representative during that period will bar a petition under this chapter. If the filing and withdrawal or dismissal of a petition under this chapter intrudes upon the protected period, the employer and incumbent exclusive bargaining representative shall be given a sixty-day protected period commencing on the date the withdrawal or dismissal is final.

(2) A "certification bar" exists where a certification has been issued by the agency, so that a petition involving the same bargaining unit or any subdivision of that bargaining unit will only be timely if it is filed:

(a) More than twelve months following the date of the certification of an exclusive bargaining representative; or

(b) More than twelve months following the date of the latest election or cross-check in which the employees failed to select an exclusive bargaining representative.

(c) A certification bar will not apply where a bargaining unit certification has been amended as a result of a self-determination election conducted pursuant to WAC 391-25-440.

(3) Where neither a "contract bar" nor a "certification bar" is in effect under this section, a petition may be filed at any time.

RECEIVED
OLYMPIA, WA



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PUBLIC EMPLOYMENT
RELATIONS COMMISSION

March 10, 2009

Cathleen Callahan, Executive Director
State of Washington
Public Employment Relations Commission
PO Box 40919
Olympia, Washington 98504-0919

Re: *Petition for Rule-Making*, WAC 391-25-030

Dear Cathy,

I represent the Public School Employees of Washington [PSE], as you know. Enclosed for filing please find a petition for rule-making with respect to one of the agency's regulations, WAC 391-25-030.

The petition is intended to address a lack of clarity in the rule with respect to its interaction with WAC 391-25-440. The issue was raised by the Washington State Attorney General in a recent representation case brought by my client pursuant to WAC 391-25-440. The concern is as follows: if a petition for a self-determination election is eventually successful, the certification of the "main" unit will have to be amended to include the newly-represented employees. The Attorney General maintains (through one of his assistant AG's) that the certification bar of WAC 391-25-030(2)(a) would then apply, and no further self-determination petitions affecting the unit would be permitted during the 12-month period of the bar.

PSE does not believe that the certification bar language that I have referenced was intended to affect units for which the existing certification was amended because of the accretion of additional employees under the auspices of WAC 391-25-440. However, a reading of the plain language of WAC 391-25-030 does not clearly support such a legal conclusion.

Our position is that it makes more sense to clarify the certification bar regulation than to litigate the issue the next time it is raised. Because the Attorney General represents almost all of the potential RCW 41.80 employers, we believe that the question

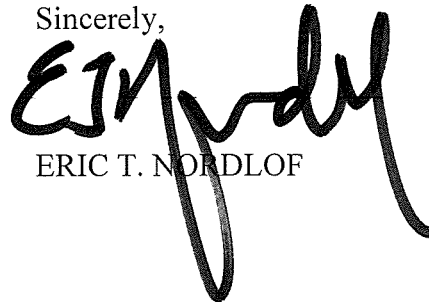
Cathleen Callahan
February 24, 2009
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is very likely to be raised in the future unless the regulation is amended to make it absolutely clear that an amended certification issued as the result of a self-determination election conducted pursuant to WAC 391-25-440 is not subject to the 12 month certification bar of WAC 391-25-030(2).

I have attached a copy of the proposed amended regulation for the Commission's review.

In the event, however, that the Commission does not, at this point, believe that the certification bar would attach to an amended certification issued pursuant to WAC 391-25-440, and cares to clarify its interpretation in writing, I am certain that my client could be persuaded to withdraw the petition.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Nordlof", with a large, stylized loop at the end.

ERIC T. NORDLOF

c: Anne Smyth
Leslie Liddle